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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,160	12/29/2000	Simon Qin	3667-0102P	6544
7590	01/06/2005		EXAMINER	
BIRCH, STEWART, KOLASCH & BIRCH, LLP			LE, DIEU MINH T	
P.O. Box 747				
Falls Church, VA 22040-0747			ART UNIT	PAPER NUMBER
			2114	
DATE MAILED: 01/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/750,160	QIN, SIMON
	Examiner Dieu-Minh Le	Art Unit 2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 30 September 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 27 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. This Office Action is response to the RCE filed on 9/30/2004 in application 09/750,160.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable Ji et al. et al. (US Patent 6,392,872 hereafter referred to as Ji) in view of Hsiao et al. (US Patent 6,496,944 hereafter referred to as Hsiao).

As per claim 1:

Ji substantially teaches the invention. Ji teaches:

- A backup/recovery (i.e., retrieval/recovery) system for protecting a computer system [abstract, col. 3, lines 8-11 and lines 55 through col. 4, lines 9; and col. 9, lines 37-68], backup/recovery system being installed in computer system [col. 14, lines 5-24];

comprising:

- application layer coupled to an interface and operating predetermined application program [col. 3, lines 13-40 and col. 13, lines 40-65];
- detecting module located within computer system for monitoring a predetermined message [col. 9, lines 20-30 and col. 17, lines 18-32];
- detecting module retrieves said predetermined data in order to determine whether there is an executable file [col. 3, lines 24-25 and col. 9, lines 1-4] contained therein for judging (i.e., virus) [col. 3, lines 25-40].

Ji does not explicitly teach:

- creating module creates a restore point (previous state) prior to downloaded predetermined data arrival.

However, Ji does disclose capability of:

- An apparatus and method for electronic mail virus detection and elimination [abstract, fig. 12-15, col. 1, lines 10-20] comprising:
 - a connectivity among clients/servers, application program, display, other computing communication devices, etc... [fig. 1-3, col. 5, lines 14 through col. 6, lines 56];
 - virus or error detected transmitted between sources and destination or client/server environment [col. 3, lines 18-22, col. 3, lines 55 through col. 4, lines 10, and col. 17, lines 18-32].
- data transferred from one area to another, rename file names, store data files, data configuration setting, etc... (i.e., backup data function) [col. 9, lines 20-66].

In addition, Hsiao explicitly teaches:

- A system for backup/recovery computer system [abstract, fig. 2, col. 1, lines 8-14]; comprising:
 - ***data restoration and reconstruction of the file system to any previous file system state. Files can be recovered to match that state and reconcile external files linked to a database to any previous state*** [col. 2, lines 44-47].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to apply the ***data restoration and reconstruction of the file system to any previous file system state*** as taught by Hsiao in conjunction with the apparatus and method for electronic mail virus detection and elimination including failure detection and recovery capability and data retrieval and recovery system as taught by Ji in supporting the error and/or virus detection and correction of the computer system via clients/servers within the computer networking environment.

This modification would have been obvious because a person having ordinary skill in the art would have been motivated to do so to provide the error and/or virus detection and correction within a backup/recovery management computer system environment, more specifically to a computer client/server with a mechanism to enhance the computer system performance and processing in ordering to provide a continuity network operating system functionality. It is further obvious because by utilizing this approach, the computer backup/recovery system with error and/or virus detection and correction capabilities can be realized in improving the backup/recovery system operation availability, network/system performance throughput, and transparent error/exception identifying and reporting therein.

As per claims 2-4:

Ji substantially teaches the invention. Ji teaches:

- a recovery system for protecting a computer system

[abstract, col. 3, lines 8-11 and col. 9, lines 37-68]

comprising:

- a connectivity among **clients/servers, application program**, display, other computing communication devices, etc... [fig. 1-3, col. 5, lines 14 through col. 6, lines 56];
- virus or error detected transmitted between sources and destination or client/server environment [col. 3, lines 18-22, col. 3, lines 55 through col. 4, lines 10, and col. 17, lines 18-32].
- **data transferred from one area to another, rename file names, store data files, data configuration setting, etc...** (i.e., **backup data function**) [col. 9, lines 20-66].
- data communication and controlling via TELNET (i.e., remotely) {col. 7, lines 1-57}.

In addition, Hsiao explicitly teaches:

- A system for backup/recovery computer system [abstract, fig. 2, col. 1, lines 8-14];

comprising:

- data backup, recovery, and restoration via networking environment [fig. 4 and 5, col. 8, lines 47-65];
- data restoration and reconstruction of the file system to any previous file system state. Files can be recovered to match that state and reconcile external files linked to a database to any previous state [col. 2, lines 44-47].

As per claims 5-7:

Ji substantially teaches the invention. Ji teaches:

- a recovery system for protecting a computer system [abstract, col. 3, lines 8-11 and col. 9, lines 37-68] comprising:
 - a **network means comprising LAN, WAN, Internet, Intranet, Extranet, and wireless network** [col. 3, line 40; col. 6, line 62; col. 13, lines 24-40; and col. 18, lines 32-37];
 - a connectivity among **clients/servers, application program, display, other computing communication devices**, ...[fig. 1-3, col. 5, lines 14 through col. 6, lines 56] via **LAN, WAN, Internet (i.e., electronics mails)** , etc...[fig. 4, col. 6, lines 18-56 and col. 13, lines 53-58];
- a communication means comprising electronics mails, TCP/IP, sockets, etc... [fig. 4, col. 8, lines 34-39 and col. 13, lines 53-58];

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- harmful data comprising a file in predetermined forms of *.EXE, *.DOC, and *.ZIP [col. 8, lines 59-67 and col. 19, lines 40-51].

In addition, Hsiao explicitly teaches:

- A system for backup/recovery computer system [abstract, fig. 2, col. 1, lines 8-14];

comprising:

- extracting location information (i.e., WWW/URL) for each referenced external files [col. 8, lines 29-31];

- DBMS and Datalink used to managing data transaction, logging, and data recovery [col. 4, lines 5-15];

- data restoration and reconstruction of the file system to any previous file system state. Files can be recovered to match that state and reconcile external files linked to a database to any previous state [col. 2, lines 44-47].

As per claims 8-14 and 15-20:

These two sets of method claims are similar to a backup/recovery system for protecting a computer system as described in claims 1-7. Therefore, these claims are also rejected under the same rationale applied against claims 1-7. In

addition, all of the limitations have been noted in the rejection as per claims 1-7. That is/are:

- *backup (i.e., retrieving) system* [col. 13, lines 15-17 and col. 17, lines 14-33];
- *installing backup/recovery system* [col. 14, lines 15-18];
- *network means comprising LAN, WAN, Internet, Intranet, Extranet, and wireless network* [col. 3, line 40; col. 6, line 62; col. 13, lines 24-40; and col. 18, lines 32-37].

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5. A shortened statutory period for response to this action is set to expire THREE (3) months, ZERO days from the date of this letter. Failure to respond within the period for response will cause the application to be abandoned. 35 U.S.C. 133.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (571) 272-3660. The examiner can normally be reached on Monday - Thursday from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571)272-3645. The Tech Center 2100 phone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**DIEU-MINH THAI LE
PRIMARY EXAMINER
ART UNIT 2114**

DML
1/3/05